

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-AE-02342-DFM
)	
JOHN VARGAS,)	ORDER GRANTING MOTION FOR
)	INVOLUNTARY INACTIVE
Member No. 270181,)	ENROLLMENT [Bus. & Prof. Code,
)	§ 6203, subd. (d); Rules Proc. of State Bar,
<u>A Member of the State Bar.</u>)	rule 5.360, et seq.

On April 18, 2014, the Mandatory Fee Arbitration Program of the State Bar of California (State Bar), appearing through Kenneth E. Bacon, its Presiding Arbitrator, filed a motion seeking the involuntary inactive enrollment of Award Debtor John Vargas (Award Debtor) pursuant to Business and Professions Code section 6203, subdivision (d) and rules 5.360 et seq. of the Rules of Procedure of the State Bar (Rules of Procedure), due to his failure to pay a binding fee arbitration award (motion). A copy of the motion was properly served on Award Debtor at his official membership records address (official address) on April 17, 2014, by certified mail, return receipt requested, and by U. S. mail, postage prepaid.¹

¹ Exhibit 3, the certified copy of the Award Debtor’s address history as of April 14, 2014, attached to the motion, is not competent evidence to establish that documents served after April 14, 2014, were properly served on the Award Debtor. The court therefore takes judicial notice of the State Bar’s official membership records pursuant to Evidence Code section 452, subdivision (h) which reflect that the motion and all other documents filed in this matter were properly served on Award Debtor.

A copy of a Notice of Assignment was properly served on Award Debtor as his official address on April 21, 2014, and was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

Award Debtor did not file a response to the motion or request a hearing. (Rules Proc. of State Bar, rules 5.362 & 5.364.)

This matter was submitted for decision on May 9, 2014. A copy of the Submission Order was properly served on Award Debtor as his official address on May 9, 2014, and was not returned to the State Bar Court by the U. S. Postal Service as undeliverable or for any other reason.

Jurisdiction

Award Debtor was admitted to the practice of law in California on June 1, 2010.

Facts

On May 17, 2012, Don San Angelo (Mr. San Angelo) requested arbitration of a fee dispute with Award Debtor.

On September 17, 2012, the Riverside County Bar Association Fee Arbitration Program served on Award Debtor and Mr. San Angelo a copy of its Findings and Award,² which awarded Mr. San Angelo \$3,675, including \$3,500 in previously paid but unearned attorney's fees and the \$175 arbitration filing fee paid by Mr. San Angelo. The award was binding on the parties.³

² Award Debtor and Mr. San Angelo were also served with a copy of Notice of Your Rights After Fee Arbitration.

³ Although the Declaration of Don San Angelo in support of the State Bar's motion (Exhibit 2) sets forth that the award was non-binding, the Findings and Award of the Riverside County Bar Association Fee Arbitration Program specifies that the award is binding. (Exhibit 1.) In addition, the State Bar's January 18, 2013, letter to Award Debtor reflects that the fee arbitration award was binding. (Exhibit 4A.) However, even if the award was originally non-binding, it would have become binding under Business and Professions Code section 6203, subdivision (b), as neither party filed a request for trial after arbitration within 30 days after service of the arbitration award.

When Mr. San Angelo did not receive payment of the award, he sent Award Debtor a letter on September 20, 2012, demanding payment of the award. Award Debtor did not respond to this letter.

Having received no payment of the award or any other communication from Award Debtor, Mr. San Angelo submitted a Client's Request for Enforcement of an Arbitration Award form (Client's Enforcement Request) to the State Bar on January 17, 2013. The State Bar filed the Client's Enforcement Request on January 17, 2013.

Under cover letter dated January 18, 2013, the State Bar served Award Debtor with, among other things, a copy of the Client's Enforcement Request and the arbitration award. The letter sets forth that, in accordance with the parties' agreement, the fee arbitration award was binding; no request to vacate or correct the award was filed; and the award is now final. The letter advised Award Debtor that he had 30 days from January 18, 2013, to (1) provide satisfactory proof to the State Bar of his payment of the arbitration award; (2) agree to a payment plan that is satisfactory to the State Bar or Mr. San Angelo; or (3) provide reasons why he should not be required to comply with the arbitration award. Award Debtor was advised that his response was due to the State Bar on or before February 19, 2013. The letter set forth that Award Debtor's failure to comply with a final and binding fee arbitration award could result in the imposition of administrative penalties. The letter also set forth that, if no response was received on or before February 19, 2013, the Presiding Arbitrator could file a motion in the State Bar Court seeking to have Award Debtor involuntarily enrolled as an inactive member of the State Bar until such time as Award Debtor pays the arbitration award and any assessed costs and penalties. The Client's Enforcement Request and other items, including the arbitration award, were served on Award Debtor at his official address by both U.S. mail, postage prepaid, and by certified mail, return receipt requested, on January 18, 2013. The mailing served by certified

mail was returned unclaimed. The mailing sent via U.S. mail, postage prepaid, was not returned as undeliverable or for any other reason.

When the State Bar did not receive a reply to the January 18, 2013, letter, it wrote to Award Debtor on February 27, 2013. The letter set forth that Award Debtor's response to a request for enforcement of an arbitration award was due on February 19, 2013, but as of February 27, 2013, the State Bar had not received any communication from Award Debtor. The letter also notified Award Debtor that the matter was being forwarded to the Presiding Arbitrator for an order imposing administrative penalties against Award Debtor. The letter also advised Award Debtor that the Presiding Arbitrator might proceed by moving the State Bar Court for an order placing Award Debtor on involuntary inactive status, and that he would then not be entitled to practice law in California until he complied with the arbitration award in full and paid any costs awarded and penalties imposed.

Award Debtor's failure to reply to the State Bar's February 27, 2013, letter prompted the Presiding Arbitrator to file an Order re Administrative Penalties against Award Debtor on April 3, 2013. The order imposed against Award Debtor an administrative penalty of \$735. The imposition of the administrative penalty was stayed for 14 days from April 3, 2013. The order set forth that the penalty would not be imposed on such date if the State Bar received evidence on or before that date that Award Debtor had fully complied with the award. On April 3, 2013, the State Bar served a copy of the Order re Administrative Penalties on Award Debtor by U.S. mail, postage prepaid, and by certified mail, return receipt requested, to his official address. The return receipt reflected delivery on April 8 but was signed by someone other than Award Debtor. Award Debtor did not contact the State Bar or pay the arbitration award within 14 days, and the penalty was added to his State Bar membership dues. Award Debtor paid the administrative penalty on July 17, 2013.

On February 25, 2014, the State Bar wrote to Award Debtor in a final attempt to settle this matter without filing the present motion. The letter advised Award Debtor of the State Bar's intent to proceed with formal enforcement of the arbitration award before the State Bar Court. The State Bar advised Award Debtor that, absent any communication from Award Debtor including either proof of full payment of the arbitration award and accrued interest or a proposal of a payment plan to pay the full arbitration award, the State Bar would serve Award Debtor with a motion requesting his involuntary enrollment as an inactive member of the State Bar until he fully complied with the arbitration award.

As of April 17, 2014, neither the State Bar nor Mr. San Angelo has had any contact from Award Debtor and no portion of the arbitration award has been paid.

Legal Conclusions

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that Award Debtor has failed to comply with the arbitration award and has not proposed a payment plan acceptable to the client or to the State Bar. (Rules Proc. of State Bar, rule 5.365(A)(1); Bus. & Prof. Code, § 6203, subd. (d)(2)(A) & (d)(2)(B).)

The court also finds that Award Debtor has not met the burden of demonstrating by clear and convincing evidence that he is not personally responsible for making or ensuring payment of the award; that he is unable to pay it; or that he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably rejected as unsatisfactory. (Rules Proc. of State Bar, rule 5.365(B); Bus. & Prof. Code, § 6203, subd. (d)(2)(B).)

ORDER

IT IS ORDERED that Award Debtor John Vargas be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6203, subdivision

(d)(1), effective five days after the date of service of this order. (Rules Proc. of State Bar, rule 5.368(B)(1).)

IT IS FURTHER ORDERED that Award Debtor must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the arbitration award to Don San Angelo in the amount of \$3,675, plus interest at the rate of ten percent per year from September 17, 2012, the date the arbitration award was served; (2) he has paid reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 5.370 of the Rules of Procedure of the State Bar of California.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 5.368(B)(2).)

Dated: June _____, 2014

DONALD F. MILES
Judge of the State Bar Court